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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket No. 98-35

Comments of Ameritech New Media, Inc.

Ameritech New Media, Inc.,[1] respectfully submits these comments on some of the issues relating to the Commission's Cable/Television Cross-ownership rule, 47 C.F.R. § 76.501(a), raised in the Commission's Notice of Inquiry ("NOI") in the above-captioned docket.[2]

Section 76.501(a) of the Commission's rules effectively prohibits common ownership of a broadcast television station and a cable system in the same local community.[3] This rule, which was adopted in 1970, was intended to promote diversity and avoid over-concentration in local mass communications media.[4] Congress codified

[1] Ameritech New Media, Inc., which is a subsidiary of Ameritech Corp., began operation as a competitive cable operator in May 1996, currently has 76 franchises, serves 61 communities in the Chicago, Detroit, Cleveland and Columbus area markets, and is the largest cable overbuilder in the country.

[2] *1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket No. 98-35, Notice of Inquiry, FCC 98-37 (rel. Mar. 13, 1998).

[3] Specifically, section 76.501 prohibits a cable system from carrying any broadcast television station if it directly or indirectly owns, operates, controls, or has an interest in a television broadcast station whose predicted Grade B contour overlaps any part of system's service area. 47 C.F.R. § 76.501(a).

[4] NOI, FCC 98-37, at para. 44.

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the cable/television cross-ownership ban in 1984,[5] but repealed the statutory prohibition in the Telecommunications Act of 1996 ("1996 Act").[6] In eliminating the statutory prohibition, Congress made clear that it was not repealing the Commission's cable/broadcast cross-ownership rule, or prejudging the outcome of any Commission review of the rule.[7] At the same time, Congress directed the Commission to review all of its ownership rules biennially.[8] Now, consistent with the requirements of the 1996 Act, the Commission seeks comment on whether the cable/television cross-ownership rule should be retained, modified or eliminated.[9]

The Cross-Ownership Rule Should Be Eliminated Only if the Commission Implements Safeguards to Address Likely Discriminatory and Anticompetitive Conduct by Cable/Television Combinations

Ameritech generally supports the elimination of cross-ownership restrictions wherever possible, consistent with the public interest, on the grounds that such restrictions may unnecessarily reduce economic efficiency by preventing parties from realizing economies of scale or scope, and result in artificial market distortions. Ameritech also believes that the anticompetitive effects that such restrictions are intended to address can often be as or more effectively remedied through non-structural safeguards targeted at specific types of anticompetitive conduct. Accordingly, Ameritech supports elimination of the cable/television cross-ownership ban, provided the Commission

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[5] 47 U.S.C. § 533.

[6] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(i) (1996).

[7] S. Conf. Rep No. 230, 104th Cong., 2d Sess. 164 (1996).

[8] *Id.* at 202(h).

[9] NOI, FCC 98-37 at para. 45.

implements adequate non-structural safeguards to address the significant potential for discriminatory and anticompetitive conduct by cable/television combinations that could deny new entrants into the multichannel video programming distribution ("MVPD") market, like Ameritech, the opportunity to compete effectively with incumbent cable operators. Specifically, if the Commission eliminates the ban, it must also: (1) take whatever steps are necessary to ensure that any television station affiliated with a cable system provides retransmission consent to unaffiliated providers of multichannel video programming on terms and conditions that are both reasonable and no worse than those offered to its cable affiliate; and (2) confirm that the program access rules prohibit a programming vendor owned by a television station from granting exclusive or more favorable access to such vendor's programming to a commonly-owned cable system, or amend its rules accordingly.

(A) Retransmission of television programming.

If the Commission eliminates section 76.501, it must recognize that a television station that is vertically integrated with a cable system will have the incentive and ability to discriminate in favor of its cable system affiliate, and deny alternative providers of video programming consent to retransmit the station's programming on the same rates and terms as its affiliate.[10] Ameritech observes in this regard that, as a new entrant into the MVPD market, it has already experienced some difficulty in securing retransmission

[10] While section 76.64(m) of the Commission's rules prohibits television stations from entering into exclusive retransmission consent agreements, it does not limit a station's ability to impose discriminatory rates, terms and conditions for carriage of the station's signal. 47 C.F.R. § 76.64(m) ("Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make an agreement with one multichannel distributor for carriage, to the exclusion of other multichannel distributors.").

consent on reasonable terms. This difficulty stems in part from the fact that new entrants generally have a smaller subscriber base than incumbents, and broadcast television stations therefore have less incentive to obtain carriage on new entrants' systems. It is also due to the fact that some television stations have agreed to grant incumbent cable operators retransmission consent in return for guaranteed channel space on the incumbents' systems for cable programming produced by such stations or their affiliates. Often, the incumbent operator is granted the exclusive right to carry such cable programming channels. The incumbent's agreement to carry such channels is, therefore, "payment" or "consideration" for retransmission consent. Because new entrants, like Ameritech, are precluded from carrying such stations' affiliated cable programming channels by virtue of these exclusive arrangements, such stations have little interest in negotiating retransmission consent with new entrants. Moreover, even when such stations do negotiate with new entrants, they often make onerous demands for retransmission consent.

Ameritech is concerned that, if the Commission repeals section 76.501, it will become significantly more difficult to negotiate retransmission consent on reasonable terms with a television station that is affiliated with a cable competitor of Ameritech. That this concern is well-justified is amply demonstrated by Ameritech's problems in obtaining access to certain quality cable programming at non-discriminatory prices, and on non-discriminatory terms and conditions, including where such programming is offered by a vendor that is vertically integrated with an incumbent cable operator.[11]

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[11] *See* Comments of Ameritech New Media, Inc., in Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution Carriage, CS Docket No. 97-248, RM No. 9097 (filed Feb. 2, 1998). *See also* Corporate Media Partners, d/b/a

Because the program access provisions of the Communications Act do not apply to retransmission consent agreements, alternative MVPDs have no assurance that they will be able to obtain access to a television station's programming on reasonable and non-discriminatory rates, terms and conditions, if that station is affiliated with a cable system.[12] Accordingly, if the Commission repeals the cable/television cross-ownership prohibition, it should, at the same time, take whatever steps are necessary to ensure that any television station involved in a cable/television combination grants retransmission consent to unaffiliated MVPDs on the same terms and conditions as it grants to its cable affiliate.

(B) Access to programs.

Ameritech is also concerned that a television station that has an attributable ownership interest in both a cable system and a satellite cable or broadcast programming

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Americast, Ameritech Media Ventures, Inc., BellSouth Interactive Media Services, Inc., GTE Media Ventures Incorporated, and SNET Personal Vision, Inc. v. fX Networks, LLC, Fox/Liberty Networks, LLC, and Tele-Communications, Inc., CSR-5235-p (filed Apr. 7, 1998) (program access complaint); Corporate Media Partners d/b/a Americast, and Ameritech New Media, Inc. v. Rainbow Programming Holdings, Inc., CSR-4873-9 (filed Dec. 6, 1996) (program access complaint).

[12] A television station affiliated with a cable system could effectively limit competition to its cable affiliate by raising the costs of its affiliate's rivals through the imposition of discriminatory rates, terms and conditions for retransmission consent. This would compel competing MVPDs to raise their rates to maintain the same profit margins or to attempt to preserve market share by not raising their rates to reflect the increase in their costs – thereby reducing their profit margins. Under this scenario, the television-cable combination would be able to increase its overall profitability through increased revenues from retransmission consent payments and/or increased cable revenues resulting from the cable system's greater market share.

Moreover, even if the Commission were to require television stations that are affiliated with cable systems to offer non-discriminatory access to their programming, a vertically integrated television station could still restrict competition in the downstream MVPD market by engaging in a price squeeze. Specifically, a television station could raise the price for retransmission consent to all cable systems and other MVPDs, including its affiliate. Just as under the previous scenario, this would compel competing MVPDs to raise rates to maintain the same profit margin or to attempt to preserve market share by not raising rates, and thereby lower their profitability. Again, the television-cable combination would be able to increase its vendor might deny access to such vendor's programming to unaffiliated MVPDs on the same terms and conditions as it provides to its cable affiliate.[13] Ameritech notes, in this regard, that the current program access rules do not apply to broadcasters. Nevertheless, Ameritech assumes that, in this scenario, the video programming vendor would be subject to the program access rules because the television broadcast station would, by virtue of its affiliation with the cable operator, be a "cable operator," and the programming vendor would, therefore, be one in which a cable operator has an attributable interest.[14] If this assumption is correct, the Commission should so clarify. If this assumption is not correct, the Commission should amend its rules to ensure that unaffiliated MVPDs can obtain on non-discriminatory terms and conditions the programming of any programming vendor owned or controlled by a television station that has an attributable ownership interest in a cable system.

Conclusion

Ameritech therefore supports elimination of the cable/television cross-ownership ban, provided the Commission: (1) takes whatever steps are necessary to ensure that

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overall profitability through increased revenues from retransmission consent payments and/or increased cable revenues resulting from the cable system's greater market share.

[13] As a related matter, because of the repeal of the financial-syndication rule, a broadcast television network with an ownership interest in a cable system might have an incentive to grant exclusive or more favorable syndication rights to off-network programming to its cable affiliate, depriving alternative MVPDs of the opportunity to compete effectively by providing comparable programming packages. If the Commission repeals the cable/television cross-ownership restriction, it should therefore prohibit television networks from granting exclusive or more favorable syndication rights to off-network programming to affiliated cable systems.

[14] *See* 47 U.S.C. § 602(5) ("the term 'cable operator' means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system"); 47 C.F.R. §76.5(cc) (same); 47 U.S.C. § 602(2) ("the term 'affiliate', when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person"); 47 C.F.R. §

alternative providers of video programming can obtain access to the programming of any television station involved in a cable/television combination on terms and conditions that are both reasonable and no worse than those offered to such station's cable affiliate; and (2) clarifies that its rules prohibit a programming vendor owned by a television station from granting exclusive or more favorable access to its programming to a commonly-owned cable system, or amends its rules accordingly.

Respectfully submitted,

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76.5(bb) ("*Significant Interest*. A cognizable interest for attributing interests in broadcast, cable, and newspaper properties pursuant to §§ 73.555, 73.3615, and 76.501.").